

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

**EXCERPT OF DAY FORTY-THREE OF JURY TRIAL
CLOSING ARGUMENT BY JUDY CLARKE**

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Monday, April 6, 2015
2:14 p.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

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On Behalf of the Defendant

P R O C E E D I N G S

THE CLERK: All rise for the Court and the jury.

(The Court and jury enter the courtroom at 2:14 p.m.)

THE CLERK: Be seated.

THE COURT: All right. We're ready to continue with the defendant's closing.

Ms. Clarke.

Are you using the CART computer?

MR. FICK: I think it's all set up, your Honor. Thank you.

MS. CLARKE: Good afternoon.

THE JURORS: Good afternoon.

MS. CLARKE: In the past few weeks, we have come face-to-face with tragedy, suffering and grief in dimensions that none of us could imagine possible. We would never have thought that this devastation would touch our lives so directly.

We've heard words, we've heard screams, and we've heard cries. We've seen shocking videos; we've seen horrific photos; we've seen the clothes of young Martin Richard. We've seen the faces of people who live daily the pain and devastation that we only witnessed.

For this destruction, suffering and profound loss, there is no excuse. No one is trying to make one. Planting bombs at the Boston Marathon one year and 51 weeks ago was a

1 senseless act.

2 Jahar Tsarnaev followed his brother down Boylston
3 Street carrying a backpack with a pressure cooker bomb in it
4 and put it down in front of the Forum restaurant, knowing that
5 within minutes it would explode. Three days later, Tamerlan
6 Tsarnaev murdered Officer Collier, and Jahar was right there
7 with him.

8 Within a half an hour or so, Tamerlan -- this is
9 giving me feedback -- Tamerlan Tsarnaev held a gun to Dun
00:06 10 Meng's head, demanded him to drive, and Jahar followed in the
11 Honda. He took the ATM card, he took the code, and he stole
12 \$800 from Dun Meng's ATM account. Jahar was part of a shootout
13 in Watertown. We know that his brother had the Ruger P95
14 because he was shooting at the police. We know that Jahar had
15 a BB gun.

16 Still, he hurled explosives at the police, and when he
17 saw his brother walk into a hail of gunfire shooting, clearly
18 determined to go out in a blaze of glory, he ran to the
19 Mercedes and escaped as police riddled the Mercedes with
00:07 20 bullets. And he ran over his older brother, the brother that
21 he loved, and the brother that he followed.

22 When I talked with you almost -- just over a month
23 ago, I said to you the evidence would bear out all of the
24 events that I just talked about and that they just talked
25 about. And it has. I said to you that we would not disagree

1 with this evidence or dispute it, challenge it, and we haven't.
2 I said to you that it was inexcusable, and it is. And Jahar
3 Tsarnaev stands ready, by your verdict, to be held responsible
4 for his actions.

5 I also told you that while we agreed with the
6 prosecution on a lot, mostly the big questions in this case --
7 the who, what, where and when -- we very much disagreed about
8 the why. In order to fully understand what happened on April
9 the 15th, 2013, and the four days that followed it, it's
00:08 10 important to know who did what and why it was done. Tamerlan
11 and Jahar were brothers, but they're both individual people who
12 thought differently, acted differently and had a very different
13 role in the conspiracies charged.

14 The prosecution must believe that this is important to
15 understand their varying roles because they made an issue of it
16 and attempted to bring you evidence that Jahar Tsarnaev was an
17 equal partner with his brother and that he self-radicalized
18 himself. This is simply not true.

19 What you heard from the government, and you heard it
00:09 20 again today -- they made the bombs, they killed Officer
21 Collier, Tamerlan didn't always lead down Boylston Street, they
22 said to Dun Meng certain things -- when the evidence is that
23 Tamerlan built the bombs, Tamerlan murdered Officer Collier,
24 Tamerlan led and Jahar followed, and Tamerlan talked always to
25 Dun Meng. You remember his testimony.

1 So let's talk a little bit about what the evidence
2 does show in terms of roles. Who researched building the
3 bombs? Who bought the necessary materials? Who planned this
4 series of horrific events? And I see you don't have notes, so
5 I won't give you exhibit numbers, but I want to show you some
6 exhibits and talk with you about some of the exhibits.

7 We know that Tamerlan did Internet research about the
8 electronic parts. And you can see it here. The radio
9 transmitter receiver, the radio transmitter, the transmitter
00:10 10 receiver, the radio, all on April the 7th. You can see it; I
11 think it's -- is it on your screens? The fireworks firing
12 system. Tamerlan did that research.

13 Tamerlan's computer -- and if we could pull up the
14 next one.

15 Tamerlan's computer had a Russian translation of the
16 *Inspire* magazine. Remember that, the *Inspire* magazine,
17 bomb-making instructions. He had a sort of value-added Russian
18 translation on his computer which advised search the Internet
19 with the terms "radio detonator" and "mobile detonator." There
00:11 20 was a Russian language set of instructions on Tamerlan's
21 computer, and this is in evidence with the translations.

22 The second document was telling people how to
23 construct these bombs without blowing themselves up. Also,
24 when you're making the bomb, get rid of all the metal things,
25 as they might detonate the powder. Work only with wooden and

1 plastic things; for example, you should not use a metal bucket
2 and all that is connected to it. That was on Tamerlan's
3 computer. Those bomb-making instructions were not on Jahar's
4 computer.

5 Tamerlan bought the pressure cookers. Now, we heard
6 evidence and I think we saw the GPS maps of the January 31st
7 purchase of pressure cookers. Today the prosecutor suggested
8 to you that perhaps Tamerlan bought them. Of course Tamerlan
9 bought them because here's what we know: Tamerlan is at
00:12 10 the -- he stops at 7:45 p.m. up north of -- here's Saugus, but
11 up north, and then he comes back and he stops at 8:13 p.m., and
12 the pressure cookers are purchased at 8:38 p.m. So he's on the
13 road at 7:45, stopping at 8:13 and buying the pressure cookers
14 at 8:38 p.m.

15 Where was Jahar? He was in Dartmouth during those
16 time periods. It's not that it might have been Tamerlan buying
17 the pressure cookers; it was Tamerlan buying the pressure
18 cookers. Jahar was in Dartmouth. Well, his telephone was in
19 Dartmouth. Now, I don't know too many 19-year-old folks who
00:13 20 leave their phones and go without them. In fact, the
21 prosecutor made the point of that, how they always carry their
22 phones. And here's Jahar with an outbound text and data usage
23 on his phone making it impossible for him to have been where
24 the pressure cookers were bought and when the pressure cookers
25 were bought.

1 Tamerlan bought the -- you saw with Agent Knapp's
2 testimony that the agent that brought us the mock-up of the
3 pressure cooker bombs, and he showed you the car -- how the car
4 would be used -- the parts of the radio-controlled car would be
5 used. Tamerlan brought -- bought a radio -- the Rally Monster
6 truck. On February the 8th, it was shipped to his house. And
7 we can show what he purchased at the bottom of the receipt.

8 Can you pull it up?

9 MR. FICK: No.

00:14 10 MS. CLARKE: Well, the bottom of the receipt shows --
11 there we go -- purchasing the Rally Monster -- Off-Road Rally
12 truck. It has rechargeable batteries being purchased and
13 transmitters being purchased. Tamerlan bought those.

14 Tamerlan bought the BBs that were loaded into the
15 bombs. Now, that was another one of those series of GPS maps,
16 and then Jerry Grant, who testified, showed where Jahar's phone
17 was.

18 Here is the GPS that shows Tamerlan's journey that
19 day, and I want you to hang on in your head for a moment, if
00:14 20 you can. The first stop was at Keller Street in Manchester,
21 New Hampshire. Walmart in Keller Street in Manchester, New
22 Hampshire. There's a receipt for the purchase of BBs at
23 3:22 p.m. Keller Street. And then there's a stop at Bedford,
24 New Hampshire, and then there's a stop in Amherst, New
25 Hampshire, and another purchase of BBs at the Amherst, New

1 Hampshire, stop. The purchase was in the -- at 5:36 p.m. And
2 then there's another stop in Hudson. So there's a stop on
3 Keller Street, Bedford, Amherst, and Hudson.

4 Now, you remember Tamerlan Tsarnaev's wallet that was
5 found in the back of the Honda on Watertown. In his wallet
6 were a variety of receipts that we helped put into evidence.
7 And one of the documents in his wallet was this, with Walmart
8 and telephones, Hudson, New Hampshire; Keller Street; Bedford.
9 He had his notes in his wallet of where he had gone to purchase
00:15 10 the BBs.

11 Where was Jahar? Again, he was in Dartmouth. Data
12 usage on his phone, an outbound text on his phone at about the
13 same times that the purchases were being made.

14 It's not that possibly Tamerlan bought these items; he
15 did. Jahar wasn't with him.

16 Tamerlan bought the additional electronics on April
17 the 8th. There's a receipt, RC Cars of Boston, that was found
18 in one of the cars parked on Norfolk Street. And it's in
19 Tamerlan's name, RC Cars of Boston. And I think it was Agent
00:16 20 Knapp who again told you that that was a purchase of an
21 additional transmitter and receiver. Tamerlan did that.

22 Tamerlan searched online for the Boston Marathon. The
23 prosecution argued to you that Jahar selected the marathon.
24 Tamerlan did. Tamerlan searched the Boston Marathon before the
25 Boston Marathon. There are no such searches on Jahar's

1 computers. This is Tamerlan's Samsung laptop.

2 Tamerlan bought the backpacks. He -- again in that
3 wallet, there's a Target receipt for purchase of the backpacks.

4 Have you got that, Bill?

5 Here's the -- it's in the wallet. You'll see a
6 picture of all of the items that were in the wallet, and you'll
7 have the wallet as well, but in the wallet is the Target
8 backpack purchase. And here's the picture of Tamarlan leaving
9 the store. He was alone.

00:17 10 Now, the prosecution introduced a lot of evidence
11 found at the Norfolk Street apartment, and you would think that
12 they gave it to you because it's related in some way to bomb
13 making. But what didn't they bring to you? Whose prints were
14 all over those items?

15 Now, the cross-examination of Elena Graff, who was --
16 it's a first for her. She's an FBI fingerprint analyst called
17 by the defense to testify about fingerprints, and the
18 cross-examination [sic] is some fingerprints disappear. So all
19 of Jahar's fingerprints disappeared, and Tamerlan's stayed on
00:18 20 there. You know who made these bombs. It was Tamerlan.

21 We know from Elena Graff that Tamerlan's prints were
22 on the glass jar with the nails in it. Tamerlan's prints were
23 on the caulk gun. Tamerlan's prints were on -- well, you'll
24 find this caulk gun in several places. I think actually
25 physically in evidence, but you won't be able to find

1 fingerprints on it. I wouldn't be able to. But prints were on
2 it. And it's also in the interactive. Remember that exhibit
3 that you can click on and see the room and click on a button
4 and it shows you what was found where? It's also in that
5 exhibit. Tamerlan's prints were on the tape. Tamerlan's
6 prints were on the solder gun. In fact, in Tamerlan's wallet
7 was a Home Depot receipt for the purchase of that solder gun.

8 Tamerlan's prints were on the tape inside the toolkit.
9 Tamerlan's -- and this is just a larger picture. You can see
00:19 10 the little ring of tape where they found Tamerlan's prints and
11 the toolkit. Tamerlan's prints are on a set of pliers in the
12 toolkit. Tamerlan's prints were on the gun-cleaning kit. And
13 Tamerlan's prints were on the wiring book.

14 So the items of evidence that the prosecut- -- and the
15 government -- that the investigation seized from Norfolk, those
16 items were seized because somebody thought they were relevant
17 to bomb making. And whose prints were on them all?
18 Tamerlan's. Whose prints were not? Jahar's.

19 Elena Graff, though, FBI fingerprint analyst, also
00:20 20 told you that Tamerlan's prints were found on two items of
21 evidence seized on Boylston Street. The cardboard was seized
22 from what they called Scene A, the first bomb, and the paper
23 inside an exploded backpack seized at what they call Scene B,
24 the second bomb; and Tamerlan's prints were found on the
25 cardboard, and Tamerlan's prints were found on the paper.

1 Whose prints were not found? Jahar's.

2 There was a transmitter found at Watertown that Elena
3 Graff also analyzed, and this was the lab photo of it sort of
4 dismantled. Tamerlan's prints were found on the transmitter.

5 There was a pressure cooker lid. And you may remember
6 the picture. It's like it landed far away and in somebody's
7 backyard, the pressure cooker lid. Tamerlan's prints were
8 found on it.

9 We know that explosive residue was found on a set of
00:21 10 rubber gloves found in Tamerlan's car. Remember the agent
11 testified about that being residue? Found in Tamerlan's car.

12 And notably missing was any residue found in Jahar's
13 dorm room where he did live. There was some explosive residue
14 found in Norfolk where he didn't live. And contrary to what
15 Agent Imel -- you may remember his testimony early in the days
16 of this case -- contrary to his suggestion that Tamerlan didn't
17 always lead down Boylston, he did.

18 So let's be honest about what the evidence actually
19 shows. We are not asking you to excuse the conduct, but let's
00:22 20 look at the varying roles. Tamerlan shot and killed Officer
21 Collier. The prosecution argued they didn't know who did that
22 murder. We know. We know. Let's look at the evidence of what
23 we know.

24 First, he confessed to Dun Meng that "I just killed a
25 policeman." He confessed. You probably remember this video,

1 and I don't think we have to play it again. The prosecution
2 played it for you. This is that -- that -- you've got the
3 distant surveillance and then the up-close surveillance. Oh,
4 they're playing it.

5 (Video recording played.)

6 MS. CLARKE: Very clearly -- if you can stop it, Bill.

7 Very clearly, two people walk up to the driver's side
8 of Officer Collier's car. Two people. Very clearly. I mean,
9 to the extent anything is very clear, but you can see two
00:23 10 figures, one in front of the other, walking up to Officer
11 Collier's car.

12 Now, Nate Harman, the MIT student who came in, rides
13 by on his bicycle not long after this. He rides by on his
14 bicycle. Remember, he's going home. It's a little late, and
15 he's going to bike on home. And what Nate Harman said is, "I
16 only saw one person." And that one person was who? Jahar.
17 And that one person stood up -- had the yellow on his
18 sweatshirt and stood up, and they locked eyes for a moment.
19 That was the only person that Nate Harman saw.

00:24 20 So where was Tamerlan? If Jahar is standing up and
21 looking at Nate Harman, where is Tamerlan? As the door
22 opens -- you know, here's the car, and the door opens --
23 there's a V. Here's Jahar standing, looking at Nate Harman.
24 Where is Tamerlan? He's got to be squatted down trying to get
25 Officer Collier's gun. And getting Officer Collier's gun would

1 put blood on your hands or blood on the gloves that you were
2 wearing.

3 Now, remember those gloves were found in the driver's
4 side floor with blood on them? Whose blood? Officer Collier's
5 blood. Officer Collier's blood was found on the keys, so the
6 gloves were used to start the car.

7 Where were the -- where was Tamerlan's personal
8 belongings found?

9 And I don't know if we have it. Exhibit 879.

00:25 10 Where was Tamerlan's personal items found? Right
11 behind the driver's seat in the Honda. The bloody gloves are
12 found on the driver's side. Tamerlan's wallet was found on the
13 backseat driver's side.

14 Now, the prosecution put on Stephen Silva to say that
15 Jahar asked him for a gun. But pretty clearly that gun went to
16 who? Tamerlan.

17 In addition to the confession that he gave to Dun
18 Meng, Tamerlan did what? He searched the Ruger P95 on the
19 Internet. He had the gun at Watertown. He shot at the police
00:26 20 at Watertown. He threw the gun at the police at Watertown.
21 Tamerlan had that Ruger the entire time. Tamerlan is the one
22 who murdered Officer Collier. Whose prints were found on the
23 magazine that went in that gun? Tamerlan's.

24 Now, what does any of this matter when we know that
25 Jahar walked down Boylston Street with a bomb in a backpack and

1 put it down in front of the Forum restaurant? When he was
2 beside his brother when his brother murdered Officer Collier?
3 When we know that when Tamerlan held Dun Meng hostage, Jahar
4 took money out of his account; and we know that Jahar hurled
5 bombs at the police? What does any of what I just discussed
6 with you matter?

7 It matters because you're entitled to know the full
8 picture. It matters because it's important for us at this
9 stage to tell you as much as we could. We don't deny that
00:27 10 Jahar fully participated in the events, but if not for
11 Tamerlan, it would not have happened.

12 There's some other things that we should talk about,
13 and one is radicalization. The government wants you to believe
14 that Jahar was self-radicalized essentially from high school;
15 that he was a young extremist in the making; that he was a
16 young jihadi in high school in the making; that his tweets were
17 jihadi; and that he attended the 2012 marathon, I guess,
18 because he was planning it that much in advance.

19 They brought you Stephen Silva to suggest that there
00:28 20 was a debate in the world history class and Jahar took some
21 extreme position. He didn't.

22 They continued to flash up onto the screen but when
23 going through the computers a paper called "The Predator
24 War" -- you'll see it -- in which there was a discussion of the
25 use of drones. And what they seemingly just simply deny is

1 that was a class assignment, and instead use it to try to
2 promote that Jahar was a young jihadi in the making.

3 The government introduced the black Islamic flag and a
4 picture of Jahar in front of it suggesting self-radicalization
5 and suggesting perhaps a connection to a terrorist group. They
6 just played, to tug on your heartstrings, some nasheeds while
7 looking at the flag, suggesting that there's something ominous
8 or wrong about that flag. Their own expert, their own expert,
9 Matthew Levitt, said there's nothing radical about that flag.

00:29 10 Some groups have adopted it, but there is nothing radical about
11 the flag. It is a religious flag.

12 The government argued to you through Stephen Silva,
13 again, that Jahar went to the 2012 marathon. Now, going back
14 that far, it's hard to convince somebody you weren't where they
15 say you were that long ago. But we did the best we could to
16 provide you circumstantial evidence, and I think the
17 circumstantial evidence is pretty strong that he wasn't there.

18 There is, in evidence, again, one of the swipe card
19 sheets from UMass Dartmouth on April 15th in the afternoon,
00:30 20 about four o'clock. Jahar goes in to Maple Ridge Hall, which
21 was the dorm he was in first year. At about five o'clock, he
22 tweets, "I'm about to sleep for 20 hours." That sounds like a
23 19-year-old to me.

24 April 16th, the next day, the day of the 2012
25 marathon, at 6:42 in the morning he tweets -- and you've seen

1 this tweet quite a lot, actually -- "They will spend their
2 money, and they will regret it, and they will be defeated."
3 Now, that -- everybody debated the source of that and what that
4 meant and the context of it.

5 At 8:38 in the morning, Jahar tweets, "Hmm. Get
6 breakfast or go back to sleep? This is always a tough one."
7 It sounds like a teenager. At 8:45 he tweets, "Sleep after
8 breakfast is so much sweeter." At 8 -- at 10:56, he uses his
9 access card to come back into the dorm. At almost -- 12:46,
00:31 10 almost one o'clock, he's tweeting again.

11 At 1:30 in the morning -- again, only the teenagers
12 can do it -- he uses his access card to enter his dorm again.
13 The likelihood that this kid, who was sleeping and eating
14 breakfast and going back to sleep and about to sleep for 20
15 hours, drove to Boston and went to the 2012 marathon is slim.
16 I don't know what it means if he did, but it sure doesn't look
17 like he did.

18 The government suggested to you deep and
19 self-radicalization by the -- remember the Al_Firdausia
00:32 20 account, the seven tweets over a two-day period of time? Look
21 at them. There is no promotion of violence in there. There's
22 no promotion of extremism in there. Looking back, somebody can
23 always say that you must have been thinking something evil at
24 the time. There isn't. And regardless, it went for two days
25 and ended. Jahar lost interest in it.

1 The government then suggested that Jahar's regular
2 Twitter account -- and you may remember the agent that
3 testified and Ms. Conrad who cross-examined him about the
4 tweets. And they're suggesting that all of these tweets had
5 some ominous, evil context to them. The agent didn't bother to
6 investigate rap songs, to investigate Nas' and Eminem and Lil
7 Wayne and to investigate that the quotes from poems, from
8 horoscopes, from Comedy Central, instead telling you that this
9 is some evidence of a jihadi in the making. The entire tweet
00:33 10 is in -- it's Exhibit 3,000. It's a thick document. And it's
11 in evidence, and you can look.

12 And the government really cherry-picked the tweets
13 that they showed you and left out the ones where it was pretty
14 much teenage, adolescent sort of tweeting about girls and
15 missing class and not doing homework and sleeping.

16 If we look in the context of the allegation of
17 self-radicalization, let's look at Jahar's Internet-browsing
18 history. Remember Mark Spencer, the computer guy that came in
19 and testified? And here's Jahar's browsing history. The
00:34 20 leading candidate is -- not candidate, the leading browsing
21 search was Facebook. The next one was VK, which is the Russian
22 Facebook. This is a kid doing kid things. This is an
23 adolescent -- this is a teenager doing teenage things.

24 The government suggested to you that a representative
25 sample of the documents on Jahar's computer were all jihadi,

1 and they selected a few files from 500,000 items and thousands
2 of files on a computer and brought them to you. We do not deny
3 that he had these extremist materials on his computer. But
4 let's be honest about how prominent they were in his life and
5 when.

6 The library of extremist materials -- you remember the
7 hard drive found in Watertown -- we called it the Laurel hard
8 drive -- and it was found inside a computer bag that had
9 Tamerlan's high school graduation certificate, a travel
00:35 10 document that -- for Tamerlan. It had Tamerlan's computer in
11 it. That computer bag had the hard drive in it.

12 And what we brought to you was very clear evidence
13 through Mark Spencer that that hard drive was formatted by
14 Tamerlan's Samsung; that hard drive was loaded -- all of those
15 documents on that hard drive came from Tamerlan's Samsung
16 laptop.

17 There was a lot of discussion about complete *Inspire*.
18 That's the one that has "How to Build a Bomb in the Kitchen of
19 Your Mom" in it. A lot of discussion about that. A lot of
00:35 20 times you were shown that document.

21 But we tried to trace the history of it for you. We
22 know that Tamerlan got his -- activated Windows on his laptop.
23 I hope you're computer friendly, but after listening to how
24 much you know about people from computers, I think we may want
25 to never use one again.

1 But complete *Inspire* was on -- let me start this way:
2 Tamerlan's laptop opened Windows on December the 21st.

3 Have you got that, Bill?

4 MR. FICK: Hang on.

5 MS. CLARKE: Do you remember Mark Spencer showed you a
6 PowerPoint-slide-looking thing that had Tamerlan's laptop, the
7 Sony and the HP? And it showed when Windows was opened on all
8 of those. Essentially what that means is that's when the
9 computer -- somebody got it and started it up and began to use
00:36 10 it. And Tamerlan's laptop was -- Windows was loaded --

11 Have you got it here?

12 Windows was loaded on Tamerlan's laptop on December
13 21st, 2011. The complete *Inspire* went onto Tamerlan's laptop
14 on December 21st, 2011, almost immediately. And then we can
15 show you the flow of this complete *Inspire* magazine because it
16 goes from Tamerlan's laptop, which is the Samsung -- there's an
17 attachment of the Patriot -- the now-missing Patriot thumb
18 drive -- to the laptop on January 21st. And remember, January
19 21st is the day that Tamerlan left for Russia.

00:37 20 The file was created -- complete *Inspire* was created
21 on that Patriot thumb drive from the Samsung, and then it
22 attached -- the Patriot attached then to the Sony, and the file
23 was created on the Sony. So it came from Tamerlan's laptop to
24 the Patriot thumb drive to Jahar's laptop. That is the course
25 of the complete *Inspire* magazine. It does not mean that Jahar

1 did not have it, but we need to understand who was leading and
2 who was following.

3 The government made a -- well, we also have a chart of
4 the other *Inspire* magazines, you know, because the one was how
5 to build a bomb in the kitchen of your mom, and then there were
6 these other *Inspire* magazines, and they follow essentially the
7 same path. The Samsung attaches to the missing Patriot thumb
8 drive on January the 21st, the complete *Inspire* is created, and
9 the attachment also creates the remaining *Inspires*, and they go
00:38 10 onto the Sony, and you can see the time, 6:22, 6:24, 6:24, 25,
11 25. They go from the Samsung to the Patriot to the Sony.

12 Now, the government made a big deal about the HP
13 desktop at Norfolk and, in fact, today said that Jahar accessed
14 jihadi materials over the Christmas break on that HP. I have
15 no idea where that evidence comes from or where that suggestion
16 comes from. We do know that at, like, two in the morning on
17 January the 1st, Jahar accesses his email on that. He's
18 clearly home for Christmas break. The testimony that we heard
19 about that HP was that everybody in the household used it, that
00:39 20 it was open, and that it was clear there were multiple users.
21 And I don't know why we would suggest today that it was Jahar
22 accessing those materials and not Tamerlan.

23 Two thumb drives were found, one in the dorm room and
24 one in the Crapo landfill. Remember those? They both had
25 extremist materials on them. But what else did they also both

1 have on them? Katherine Tsarnaev, Tamerlan's wife's paycheck
2 stub and a rental application in her name. Those thumb drives,
3 fairly clearly, came from Tamerlan.

4 Let's talk for just a minute about Jahar's actions
5 after the bombing because the government makes a big deal about
6 buying the milk and going to the gym. It is bizarre. It's
7 about as bizarre as going back into the Mobil station to put
8 the Doritos back down when Tamerlan comes and says, "Hurry up."
9 It's about as disconnected as that.

00:41 10 I think what it really shows is that, overall, he
11 bought into his brother's plan and his brother's actions and,
12 as the boat writing suggests, was convinced they were right.

13 We should talk about the writings in the boat. We
14 should talk about these. You won't find them on the verdict
15 form, but you will find them in the evidence. The prosecution
16 sort of paints the picture of calm reflection inside the boat
17 and that Jahar had time to think and plan out what he was
18 doing.

19 Remember how he got there? He had gotten into the
00:42 20 Mercedes, fled into a hail of gunfire, the windshield
21 bullet-riddled. There's a series of these Mercedes pictures.
22 But you can see the bullets right at the driver's -- you can
23 see a picture where the bullets lodged into the headrest.
24 There wasn't time for calm reflection.

25 You've seen the boat. He's in the boat, and he's

1 bleeding, and you've seen the pictures in the boat of the blood
2 all over. And what does this 19-year-old do? He tries to tell
3 why they did what they did. It wasn't like it was written out
4 and ready to be distributed. It wasn't like it was a message
5 to the world. It was this 19-year-old's attempt to write about
6 why they did what they did.

7 And what does he say? "I'm jealous of my brother who
8 has received the reward of paradise. He's gone." And he tries
9 to explain why they did what they did. What he doesn't write
00:43 10 in here is what you might think a violent jihadi might write:
11 "Death to America." He doesn't write that. He doesn't
12 write -- he doesn't write, "Curse to America." He knew it all
13 along that it was wrong to take innocent lives, and he says
14 that. But he expressed the very twisted belief, the very
15 twisted belief, that his actions would make a difference.

16 The government tried to tie these writings to *Inspire*
17 magazine and some of the other extremist materials. It's not
18 on your verdict form to find, but if you look at those other
19 materials, maybe some of the ideas expressed are in there, but
00:44 20 the language is not. That's up to you to judge. And we don't
21 know whether he got that, those ideas, from *Inspire* magazine or
22 from his brother.

23 Finally, I'd like to talk with you for just a few
24 minutes about the four minutes on Boylston. The government --

25 Is that in your way?

1 THE COURT: It's blocking my view of the -- some of
2 the lawyers.

3 MS. CLARKE: How's that?

4 THE COURT: That's much better. Thank you.

5 MS. CLARKE: The government argued to you in opening
6 statement, and again now, that there were four minutes, and
7 Jahar could have changed his mind. They argued to you that
8 Jahar went to that location to target children. They argued to
9 you in opening that after reaching -- after talking with his
00:45 10 brother, he reached a safe distance and detonated the bomb.
11 There were families there.

12 And who got killed and who got hurt and who escaped
13 was inexplicable, and Jahar's actions inexcusable, but for what
14 he saw when he arrived at that tree -- and I'm going to play
15 that video again for you to see if there was any indication
16 that he walked up to that spot and targeted children. I think
17 you'll see on the clip on the video that Jahar walks up and the
18 selection was made because it was a tree. So let's...

19 (Video recording played.)

00:46 20 MS. CLARKE: You see him walking up.

21 (Video recording played.)

22 MS. CLARKE: Okay. Thank you, Bill.

23 You can judge for yourselves, but the video appears
24 that he walks up and he stops at the tree, not at the children.
25 The backpack was already down by the time of the 2:48 p.m.

1 photo that the government has shown us several times. There
2 was movement by people going and coming. It does not make it
3 better, but let's not make his intent any worse than it was.

4 The government told you in opening statement that
5 Jahar was -- when he got a safe distance away, he detonated the
6 bomb. We heard no evidence of how the second bomb was
7 detonated and by whom. The evidence does not show that he was
8 a safe distance away. You've watched it again a couple of
9 times in the prosecution's argument. What the evidence does
00:47 10 show is that he was dangerously close when the bomb exploded.

11 I'm going to stop in just a couple of minutes. And
12 the prosecutor has an opportunity to get back up here and to
13 hammer home their story again. We spent our time in this phase
14 of the case trying to correct misimpressions and trying to
15 complete the picture as best we could, given the issues that
16 you have to decide in this phase.

17 You now have to answer a whole lot of questions.
18 There are 30 complicated charges. The judge spent over an hour
19 instructing you about them. The indictment is long. The
00:48 20 instructions are long. The verdict form is 30 pages -- 31
21 pages long with a lot of questions for you to answer, for you
22 to discuss, for you to hear from each other about, for you to
23 express your opinions about. And we know that you will do that
24 thoughtfully and truthfully because it's your job and it's your
25 responsibility to do it.

1 You've heard just a very little bit about who Jahar
2 was before April the 15th, 2013. You've heard a very little
3 bit of evidence in this phase of the case about that. He was
4 19. You've seen that while he bought into the plan and bought
5 into the beliefs and passion that drove the plan and has now
6 changed many, many lives forever, including his own, he was an
7 adolescent and also doing adolescent things. He was searching
8 Facebook. He was tweeting his friends. He was texting his
9 friends. The prosecution says this was a double life. He was
00:50 10 an adolescent drawn into a passion and belief of his older
11 brother and still living a teenage life. He was flunking out
12 of school, and he was making up lame excuses about why he was
13 failing.

14 You also know from the one person who testified in
15 this phase, Stephen Silva, the one person who knew Jahar before
16 April 15, 2013, testified and told you that he never met
17 Tamerlan, but he was controlling and strict, and Jahar never
18 would introduce him to Tamerlan.

19 In the next phase of this case, you'll learn a lot
00:51 20 more. We ask you to hold your minds open. We asked you that
21 in the beginning of this case, to hold your minds open to what
22 more there is to hear, to what more there is to learn, and to
23 what more there is to understand.

24 We know that in the face of the heartbreak you've
25 watched and listened to and felt, and the horrific crimes that

1 you've been exposed to over the last month, that that is not an
2 easy task, but we ask you to do it.

3 And now when you go back to the jury room, we are not
4 asking you to go easy on Jahar. We are not asking you to not
5 hold him accountable and responsible for what he did. The
6 horrific acts that we've heard about, the death, destruction
7 and devastation that we've heard about deserve to be condemned,
8 and the time is now. I know, and we know, that by your
9 verdict, you will do what is right and what is just, and your
00:52 10 verdict will speak the truth.

11 Thank you very much.

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C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

Date: 4/6/15